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September 8, 2004

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 21, 2004

Case Number: TSO-0100

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxx (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." [1] A local DOE Security Office suspended the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored at this time.

## I. Background

The individual has held a DOE security clearance for many years while employed in positions that have required him to maintain a security clearance. In August 2002, the police arrested the individual and charged him with, among other things, "Aggravated Driving While Intoxicated (DWI), Possession of Marijuana, and Having an Open Container." After the individual reported his arrest to the DOE, the DOE conducted a Personnel Security Interview (PSI) with the individual to obtain information regarding the circumstances surrounding the arrest and the extent of the individual's alcohol and drug use. After the PSI, the DOE referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist) for a mental evaluation. The DOE consultant-psychiatrist examined the individual in January 2003, and memorialized his findings in a report (Psychiatric Report or Exhibit 2-1). In the Psychiatric Report, the DOE consultant-psychiatrist opined that the individual is currently a user of alcohol habitually to excess. The DOE consultant-psychiatrist also found that the individual does not present evidence of adequate rehabilitation or reformation.

[1] Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

In January 2004, the DOE initiated formal administrative review proceedings. The DOE first informed the individual that his access authorization had been suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility to hold a security clearance. In a Notification Letter that it sent to the individual, the DOE described this derogatory information and explained how that information fell within the purview of three potentially disqualifying criteria. The relevant criteria are set forth in the security regulations at 10 C.F.R. § 710.8, subsections j, f and l (Criteria J, F and L respectively).[2]

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations and requested an administrative review hearing. On April 22, 2004, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. Subsequently, I convened a hearing within the regulatory time frame specified by the Part 710 regulations.

At the hearing, ten witnesses testified. The DOE called two witnesses and the individual presented his own testimony and that of seven witnesses. In addition to the testimonial evidence, the DOE submitted 31 exhibits into the record; the individual tendered 21 exhibits. On August 11, 2004, I received the hearing transcript (Tr.) at which time I closed the record in the case.

## II. Regulatory Standard

### A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting

[2] Criterion J relates to information that a person has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8 (j). Criterion F relates to information that a person "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive National Security Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through §710.30." 10 C.F.R. § 710.8(f). Criterion L concerns information that a person has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." 10 C.F.R. § 710.8.(l).

security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied,* 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to an individual's access authorization eligibility in favor of the national security. *Id.*

## III. The Notification Letter and the Security Concerns at Issue

As previously noted, the DOE cites three potentially disqualifying criteria as bases for suspending the individual's clearance, *i.e.*, Criteria J, F and L.

With respect to Criterion J, the DOE relates the following information. First, a DOE consultant-psychiatrist diagnosed the individual as using alcohol habitually to excess. Second, the individual admitted to the DOE consultant-psychiatrist that he was legally intoxicated twice during the week that he underwent his psychiatric evaluation, and five to six times in the year preceding that psychiatric evaluation. Third, the police either detained or arrested the individual on three occasions (1979, 1997 and 2002) for incidents involving alcohol. The information set forth above clearly raises questions about the individual's alcohol use. Excessive alcohol consumption is a security concern because the behavior can lead to the exercise of questionable judgment, unreliability, and a failure to control impulses, and can increase the risk that classified information may be unwittingly divulged. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline G.

As for Criterion F, the DOE questions the individual's candor because of inconsistent statements that he made regarding his past drug use during the course of investigations to determine his access authorization eligibility. Specifically, the individual responded negatively in 1989 to a question on a Personnel Security Questionnaire (PSQ) asking whether he had ever been a user of illegal drugs. However, during a 2002 PSI the individual admitted to a DOE personnel security specialist that he had used marijuana

twice between 1974 and 1976. Then in 2003, the individual told the DOE consultant-psychiatrist that he had also used cocaine once between 1976 and 1978. From a security perspective, the deliberate falsification or omission of significant information during an official inquiry into matters such as past drug use raises questions about a person's trustworthiness, reliability, and honesty and his or her ability to properly safeguard classified information.

Regarding Criterion L, the DOE refers to the same false or inconsistent statements that the individual made in 1989, 2002 and 2003 about his past drug use that provide the bases for the Criterion F concerns cited above. In addition, the DOE notes that during a PSI conducted in 1997, the individual denied using any illegal drugs in the past. Yet, the individual admitted in 2002 and 2003 to having used marijuana and cocaine in the past. The DOE asserts further that during the 2002 PSI that followed the individual's arrest for, among other things, DWI and Possession of Marijuana, the individual admitted that he knew the DOE's policy regarding illegal drug use and stated that he would not be around illegal drugs again. However, in 2003 the individual told the DOE consultant-psychiatrist that he had been around marijuana as recently as three to four weeks before the psychiatric evaluation. When the DOE consultant-psychiatrist asked the individual if he knew that he was not supposed to be around illegal drugs while he held a security clearance, the individual responded affirmatively. The individual's inconsistent statements during official DOE inquiries into his background, coupled with his admissions that he had been around marijuana in 2003 despite knowing the DOE's policy against associating with persons who used illegal drugs, raise questions about the individual's judgment, honesty, reliability and trustworthiness.

## IV. Findings of Fact and Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).[3] After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

[3] Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

## A. Criterion J

### 1. The Individual's Alcohol Excessive Use

While the individual disputes some of the details relating to his three alcohol-related arrests, the record in this case supports a finding that the individual did habitually consume alcohol to excess in the past, and that his excessive alcohol consumption is problematic from a security perspective. [4] A board-certified psychiatrist, a Ph.D. clinical psychologist and a substance abuse therapist all opined that the individual's use of alcohol is at a point where he requires professional intervention.

Specifically, the DOE consultant-psychiatrist testified that the individual has been a user of alcohol to excess in the past and was a user of alcohol to excess as of the date of the psychiatric evaluation in January 2003. Tr. at 41. To support his opinion on this matter, the DOE consultant-psychiatrist related that the individual consumed 34 alcoholic beverages during the week that he underwent his psychiatric examination. *Id.* at 37. In addition, the individual admitted during the psychiatric examination to being intoxicated twice during that same week. *Id.* Moreover, the DOE consultant-psychiatrist related that the individual's laboratory test results in January 2003 showed an elevation in his liver enzymes, a fact that further supports the DOE consultant-psychiatrist's opinion that the individual is habitually and excessively consuming alcohol. The DOE consultant-psychiatrist recommended that the individual's rehabilitation should include (1) attendance at Alcoholics Anonymous (AA) with an AA sponsor for 100 hours, and (2) abstinence from alcohol for one year following completion of AA. *Id.* at 168. Alternatively, the DOE consultant-psychiatrist suggested that the individual complete 50 hours of a professionally led substance abuse treatment program for a minimum of six months, including aftercare. *Id.* at 169. If the individual follows this latter route, according to the DOE consultant-psychiatrist, he should also abstain from alcohol for one and one-half years following his completion of the substance abuse treatment program. *Id.* Under either scenario, testified the DOE consultant-psychiatrist, the individual must abstain from alcohol for a period of two years before he can be considered rehabilitated. With regard to reformation, the DOE consultant-psychiatrist related that if the individual goes through one of the two rehabilitation programs listed above, then two years of absolute sobriety would be necessary to show adequate evidence of reformation. Ex. 2-1 at 18. However, if the individual does not go through one of the two rehabilitation programs listed above, then three years of absolute sobriety would be necessary to show adequate evidence of reformation.

[4] The experts in this case agree that there is insufficient information to find that the individual suffers from alcohol dependence or alcohol abuse. The individual's habitual use of alcohol to excess is nevertheless a security concern under 10 C.F.R. §710.8(j).

A Ph.D. psychologist examined the individual in 2004 and administered four psychological tests to him.[5] Based on the results of the psychological testing and two interviews with the individual, the Ph.D. psychologist opined that the individual's recreational use of alcohol "hit a level of concern with red flags." Tr. at 84. The Ph.D. psychologist believes, however, that the individual is a good candidate for substance abuse treatment. *Id*. at 71. It is the Ph.D. psychologist's view that the individual should permanently abstain from alcohol, actively participate in more than 100 hours in AA, and continue in counseling with a substance abuse professional until October 2004. *Id.* at 80.

A substance abuse therapist who is treating the individual did not testify at the hearing. She did, however, provide a written report for the record in which she described the individual's alcohol use as "moderate." Exhibit (Ex.) A. After the hearing, the therapist submitted another report in which she stated that by July 30, 2004, the individual "will have completed 12 substance abuse therapy sessions." Ex. L. She noted in her new report that on May 24, 2004 she had recommended that the individual attend 50 hours of treatment to include group therapy sessions and AA. *Id.* The therapist further indicated in Exhibit L that she would be discharging the individual from her care on July 30, 2004. *Id.* The therapist opines in her report that the individual's prognosis for recovery is "good," and that he is motivated to attend AA until he completes 50 hours in that program. *Id.*

### 2. The Individual's Progress in Addressing his Excessive Alcohol Use

Based on the record before me, I find that the individual is making positive progress towards achieving rehabilitation and reformation from his excessive alcohol use. For example, the results of laboratory tests conducted on the individual in July 2004 show that the individual's liver enzymes have returned to normal. Exs. D-1, D-2. The individual's wife, son, and brother-in-law corroborated the individual's statements to the Ph.D. psychologist that he had stopped consuming alcohol in February 2004. Tr. at 73, 100, 118, 122, 130-131. The individual provided sign-in sheets from 19 AA meetings that he attended between May and July 2004 demonstrating that he has begun attending those meetings as suggested by the DOE consultant-psychiatrist, the Ph.D. psychologist, and the substance abuse therapist. Ex. B. In addition, the substance abuse therapist provided documentary evidence that the individual has completed 12 substance abuse sessions with her. Finally, the individual and his wife testified that they no longer have alcohol in their home, a fact that suggests to me that the individual is serious about maintaining his sobriety.

Despite these positive factors, it is simply too early in the individual's rehabilitative efforts for me to make a positive predictive assessment that he will maintain sobriety for a sustained period of time. The DOE consultant-psychiatrist recommended that the individual attend 100 hours of AA. *Id*. at 168. The Ph.D. psychologist suggests that the individual actively participate in AA "beyond" 100 hours. *Id*. at 80. The substance abuse therapist recommended 50 hours of participation in AA. Ex. L. As of the date of the hearing, the individual had attended only 19 hours of AA, a mark far short of the milestones suggested by the credentialed medical professionals. Moreover, the DOE consultant-psychiatrist recommended two years of sobriety before he would consider the individual rehabilitated from his excessive use of alcohol. The individual's own expert, the Ph.D. psychologist, suggested permanent abstinence. As of the date of the

[5] The four tests administered to the individual include: the Minnesota Multiphasic Personality Inventory 2 (MMPI-2); the Substance Abuse Subtle Screening Inventory (SASSI); the Alcohol Use Disorders Identification Test (AUDIT); and the Millon Index of Personality Styles, Revised (Millon).

hearing, the individual had abstained from alcohol for a period of four months, again, a mark far removed from the recommendations of the medical professionals in this case.

In deciding that the individuals' rehabilitative efforts to date are insufficient to mitigate the Criterion J security concerns at issue here, I accorded substantial weight to the opinions of the experts as set forth above regarding their recommendations for rehabilitation. I also seriously considered the individual's own testimony as evidence in concluding that he needs significantly more time working through his alcohol issues before he can achieve success in his recovery efforts. Specifically, he did not convince me that he understood the principles espoused by AA or had incorporated them into his day-to-day living. *See, e.g.,* Tr. at 180.

In summary, based on all the foregoing, I find that the individual has not brought forth sufficient evidence to mitigate the security concerns predicated on Criterion J in this case.

**B. Criterion F**

The individual presents several arguments to address the DOE's security concerns regarding his inconsistent statements about his past use of illegal drugs. The individual first contends that he interpreted the question on the 1989 QSP about drugs[6] as asking whether he was a regular user of drugs, not whether he had ever used drugs in the past. *Id.* at 146. Second, the individual testified that he does not pay close attention to the details of forms, and for this reason usually asks his wife to help complete all forms for him.[7] *Id.* At the hearing, the Ph.D. psychologist testified that based on his observation of the individual, he is under the impression that the individual is inattentive to detail. *Id.* at 77.

Even if I were to accept the individual's contention that he did not deliberately falsify his 1989 QSP form because he earnestly believed that the question at issue only sought information about regular illegal drug use and not one-time or limited illegal drug use, I still cannot find that the individual has mitigated the DOE's Criterion F concerns. The individual has not presented credible evidence to address his recent lack of candor during the 2002 PSI about his past drug use. While it is true that the individual admitted during that 2002 PSI that he had used marijuana when he was in high school in the mid-1970s, the record, as excised below, shows that the individual lied to the Personnel Security Specialist about his past use of cocaine during that same interview. Ex. 5-1 at 32, 49.

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[6] The question at issue read as follows in 1989: "Are you now, or have you been a user of any narcotic, hallucinogen, stimulant, depressant, or cannabis (to include marijuana and/or hashish), except as prescribed by a licensed physician?

[7] His wife could not recall whether she had assisted her husband in 1989 when he completed the QSP in question. Tr. at 132.

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|---|---|
| Personnel Security Specialist: | [H]ave you used any other illegal drugs? |
| Individual: | No. |
| Personnel Security Specialist: | How about hashish? |
| Individual: | N—no. |
| Personnel Security Specialist: | Heroin? |
| Individual: | No. |
| **Personnel Security Specialist:** | **Cocaine?** |
| **Individual:** | **No.** |

*(*emphasis added) Id. Four months after the exchange recounted above, the individual admitted to the DOE consultant-psychiatrist that he used cocaine around 1976 to 1978. Ex. 2-1 at 11. The individual claimed at the hearing that he disclosed his past use of cocaine to the DOE consultant-psychiatrist because the DOE consultant-psychiatrist asked the individual if he had ever "experimented" with cocaine. Tr. at 145. The Psychiatric Report, however, reflects that the individual responded positively to the question whether he had ever "used" cocaine. Ex. 2-1 at 11. When queried at the hearing why he did not disclose his use of cocaine to the DOE during the 2002 PSI, the individual responded as follows:

> It was asked if I used it or if I was a user of it, and like I say, when I was with DOE, I was still thinking that I answered the same kind of form that I answered before, you know, on the form, so I just said, no, you know, because I wasn't a user.

Tr.at 145. There was nothing ambiguous about the wording of the personnel security specialist's question during the 2002 PSI inquiring about the individual's past use of cocaine. After carefully reviewing the testimony in this case and reflecting upon the individual's demeanor at the hearing, I have concluded that the individual's semantic arguments regarding the personnel security specialist's questioning during the 2002 PSI are without merit. For this reason, I conclude that the individual deliberately lied about the extent of his past illegal drug use during the 2002 PSI.

I next considered whether the individual has demonstrated reformation from his lying. In previous administrative review cases, Hearing Officers have held that acknowledging wrongdoing and taking full responsibility for one's actions are important and necessary steps in the process of reformation. *Personnel Security Hearing* (Case No. TSO-0024), *http://www.oha.doe.gov/cases/security/tso0024.pdf*. (2004); *Personnel Security Hearing* (Case No. VSO-0440), 28 DOE ¶ 82,807 (2001) (affirmed by OSA, 2001). Hearing Officers have also held that it is the subsequent pattern of responsible behavior that is the key to abating security concerns that arise from lying. *See Personnel Security Hearing* (Case No. VSO-0289), 27 DOE ¶ 82,823 (1999), *aff'd, Personnel Security Review*, 27 DOE ¶ 83,025 (2000) (affirmed by OSA, 2000) and cases cited therein.

In this case, the individual has not acknowledged his wrongdoing in providing an erroneous response to a DOE official about the nature and extent of his past drug use.

Furthermore, based on the individual's testimony and my observation of his demeanor at the hearing, I am not convinced that he fully understands the seriousness of his falsification. Nor am I convinced that he is taking responsibility for his actions by making excuses for his misrepresentations to the DOE. Further, I note that the individual did not express any remorse for his falsification at the hearing and provided no assurance that he will provide candid responses in the future to the DOE about matters potentially impacting upon his access authorization.

I also considered whether the individual has comported himself in an honest, upright manner since he admitted his past cocaine use to the DOE consultant-psychiatrist in 2003. On this matter, I considered the testimony of the individual's brother-in-law, co-workers and former team leader (Tr. at 91, 94-95, 111, 118), who all attested to the individual's work ethic, dependability, and reliability on the job. These testimonies are positive factors in the individual's favor. They are not sufficient, however, to convince me that the individual will be honest with the DOE in the future about matters impacting upon his access authorization. In the end, in view of the number of years that the individual concealed his past illegal drug use from the DOE and his failure to "come entirely clean" with the DOE in 2002, I find that the individual has not demonstrated a pattern of honest behavior for a sustained period of time and therefore cannot be considered reformed from his lying.

Based on all the foregoing considerations, I find that the individual has not mitigated the Criterion F concerns at issue in this proceeding.

### C. Criterion L

The same lingering doubts about the individual's honesty, reliability and trustworthiness that prevented me from finding mitigation under Criterion F also prevent me from finding mitigation under Criterion L. Under Criterion L, the DOE also cites evidence that the agency could have cited under Criterion F to cast aspersion on the individual's trustworthiness and candor. Specifically, the DOE asserts that the individual lied to the agency in 1997 during a PSI. During the interview in question, the interviewer asked the individual, "Have you ever used illegal drugs?" Ex. 5-3 at 28. The individual responded, "No, ma'am." *Id.* The individual's false verbal statements in 1997 and 2002 about his past illegal drug use, combined with his written falsification on the 1989 QSP on the same subject are very serious matters. The individual concealed his past illegal drug use from the DOE for 14 years, during which period he could have been susceptible to blackmail, coercion, or undue pressure.

Furthermore, the individual admitted to the DOE consultant-psychiatrist that he had been around illegal drugs as recently as two weeks before the psychiatric evaluation in January 2003. The individual then admitted to the DOE consultant-psychiatrist that he knew he was not supposed to be around illegal drugs while he possessed a security clearance. The individual presented no documentary or testimonial evidence to refute this information. These uncontested facts raise serious questions about the individual's trustworthiness that remain unmitigated.

## V. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria J, F, and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns advanced by the DOE. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: September 8, 2004